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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,032	08/28/2001	Thomas T. Yamashita	YAMA001CON9	7285
24353	7590	12/09/2003	EXAMINER	
BOZICEVIC, FIELD & FRANCIS LLP 200 MIDDLEFIELD RD SUITE 200 MENLO PARK, CA 94025			GELLNER, JEFFREY L	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 12/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/942,032	YAMASHITA, THOMAS T.
<b>Examiner</b>	<b>Art Unit</b>	
Jeffrey L. Gellner	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on 26 September 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 29-68 is/are pending in the application.  
4a) Of the above claim(s) 29-39 and 42-51 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 40,41,53-56 and 62-68 is/are rejected.

7)  Claim(s) 52 and 57-61 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.  
13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a)  The translation of the foreign language provisional application has been received.  
14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6)  Other: *translation of JP55-40723.*

**DETAILED ACTION**

*Specification*

The disclosure is objected to because of the following informality:

The replacement paragraph for the benefit of prior filed applications of the amendment entered 26 September 2003, as paper no. 21, is improper because any benefit claim under 35 USC § 120, 121, or 365(c) that does not identify a prior application and also specify a relationship between each of the applications will not be in compliance with 37 CFR 1.78(a)(2)(i). In the instant paragraph the language “Application Serial No. 08/795,192, filed February 4, 1997, now U.S. Patent No. 5,797,976, which is a continuation-in-part of Application Serial No. 07/242,951, filed September 9, 1989, now abandoned and a continuation-in-part of Application Serial No. 07/354,155 . . .” is improper because the relationship between 07/242,951 and 07/354,155 is not stated.

Appropriate correction is required.

*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 40, 41, 53-56, are rejected under 35 U.S.C. §102(b) as being anticipated by JP55-40723.

As to Claim 40, JP55-40723 discloses a composition used to treat soil (title in English abstract) and to enhance plant growth (page 5 1<sup>st</sup> complete para. of translation in English) comprising an assimilable carbon skeleton energy component (“glucose” of page 11 2<sup>nd</sup> complete para. of translation in English), a macronutrient component (“crude protein” of top of page 12 of translation in English), a micronutrient component (“Fe” of page 11 2<sup>nd</sup> complete para. of translation in English), a vitamin cofactor component (“vitamins” of page 12 of translation in English), and a complexing agent (Ca of “calcium carbonate” of page 14 of translation in English). The composition of JP55-40723 would inherently perform the method steps recited in Claim 40.

As to Claims 41 and 64, JP55-40723 further discloses a microorganism, *B. subtilis* (page 11 2<sup>nd</sup> complete para. of translation in English) which has a beneficial effect upon the soil.

As to Claims 53 and 54, JP55-40723 further discloses glucose (“glucose” of page 11 2<sup>nd</sup> complete para. of translation in English).

As to Claim 55, JP55-40723 further discloses a molasses (“crude syrup” of page 11 3<sup>rd</sup> complete para. of translation in English).

As to Claim 56, JP55-40723 further discloses nitrogen (inherent in “crude protein” of top of page 12 of translation in English).

As to Claim 62, JP55-40723 further discloses iron (“Fe” of page 11 2<sup>nd</sup> complete para. of translation in English).

As to Claim 63, JP55-40723 further discloses pantothenic acid (“pantothenic acid” of page 12 of translation in English).

As to Claim 65, JP55-40723 further discloses two types of organisms (“filamentous bacteria and yeast fungi” of page 10 penultimate para.).

***Claim Rejections - 35 USC §103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 66-68 are rejected under 35 U.S.C. §103(a) as being unpatentable over JP55-40723.

As to Claims 66-68, the limitations of Claim 40 are disclosed as described above. Not disclosed is the crop a cereal such as rice or a bean. Examiner takes official notice that rice and beans are old and notoriously well known crops of Japan the country of issue of JP55-40723. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of JP55-40723 by using the method on known crops of Japan since the method reinvigorates “tired” soil (see JP55-40723 at pages 4 and 5 of the translation in English).

***Allowable Subject Matter***

Claims 52 and 57-61 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed 26 September 2003 have been fully considered but they are not persuasive. Applicant's argument is that JP55-40723 does not disclose an assimilable carbon energy skeleton energy component (Response at page 9 last two para.). Examiner considers "glucose" of page 11 2<sup>nd</sup> complete para. of the translation in English of JP55-40723 to be an assimilable carbon energy skeleton energy component.

***Conclusion***

Examiner has included a copy of the translation in English of JP55-40723. As to the question of whether the response mailed 11 April 2003 was entered (Remarks page 9 1<sup>st</sup> para.). The amendment was entered.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

  
Jeffrey L. Gellner



PETER W. POON  
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